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T.R.A. DOCKET ROOM

August 11, 2003

Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition for Arbitration of ITC DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc. Pursuant to the Telecommunications
Act of 1996*
Docket No. 03-00119

Dear Chairman Tate:

Please accept for filing in the above-captioned proceeding the original and fourteen copies of the Rebuttal Testimony of the following on behalf of ITC^DeltaCom:

Steve Brownworth
Mary Conquest
Pat Heck
Jerry Watts

I have enclosed an additional copy to be stamped "filed." I appreciate your assistance in this matter.

Respectfully submitted,
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Leslie Evans
Leslie Evans
414 Union Street, Suite 1600
Nashville, Tennessee 37219
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LRE/pp
Enclosure

Cc: Henry Walker

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of:

)
)
**Petition of Arbitration of ITC^DeltaCom)
Communications, Inc. with Bellsouth)
Telecommunications, Inc. Pursuant to the)
Telecommunications Act of 1996)**

Docket No. 03-00119

**REBUTTAL TESTIMONY OF
PAT HECK
ON BEHALF OF
ITC^DELTACOM COMMUNICATIONS, INC.**

1 **Q. Please state your name and business address.**

2 A. My name is Pat Heck. My business address is 1419 Lloyd Expressway,
3 Suite 101, Evansville, Indiana 47710.

4 **Q. Who do you work for?**

5 A. I am Chief Technology Officer for Cinergy Communications Company
6 (CCC).

7 **Q. What are your responsibilities as CTO of CCC?**

8 A. I oversee our data delivery infrastructure including our core data network
9 services, hosting services, and new product development. I also oversee
10 research and development of most telecommunication services and
11 oversee the development of automation systems for customer-touching
12 departments such as Customer Service and the Repair Center.

13 **Q. Please briefly outline your educational background and related**
14 **experience.**

15 A. I graduated from the University of Evansville in 1985 with a degree in
16 Computer Science and earned a Masters Degree in Computer Science
17 from the University of Virginia in 1988. I was accepted into the Ph.D.
18 program at the University of Virginia and have completed all required
19 courses. From 1991 to 1994 I served as an assistant professor at the
20 University of Evansville and continued working on required research
21 projects at the University of Virginia. In August of 1994 I, with the help of
22 some Evansville area businessmen, started World Connection Services, a

1 successful residential and commercial Internet Service Provider where I
2 served as the President from 1994 to 2000. Under my direction, World
3 Connection Services grew from a small ISP serving Evansville into a
4 regional ISP serving Southwestern Indiana and Western Kentucky with
5 approximately 8,000 subscribers. In 1998, World Connection Services
6 was acquired by Q-Comm Corporation, the parent company of CCC. In
7 2000, World Connection Services, then named Network WCS, was
8 merged into CCC and I took on the responsibilities of the Chief
9 Technology Officer.

10 **Q. Have you previously testified in a regulatory proceeding before a state**
11 **utility commission, the FCC or a hearing officer?**

12 **A.** Yes. I have testified before the Public Service Commission in the state of
13 Kentucky in CCC's Arbitration of an Interconnection Agreement with
14 BellSouth Telecommunications, Inc (BellSouth). Additionally, I have
15 submitted testimony to the Tennessee Regulatory Authority in CCC's
16 Arbitration of an Interconnection Agreement with BellSouth.

17 **Q. What is the purpose of your testimony in this proceeding?**

18 **A.** The purpose of my testimony is to provide support for the position of ITC
19 DeltaCom Communications, Inc ("DeltaCom") in regards to unresolved
20 Issue 25 in the Interconnection Agreement arbitration between BellSouth
21 and DeltaCom.

1 **Q. Did you have an opportunity to review the testimony of the witness**
2 **Mr. John A. Ruscilli for BellSouth Telecommunications?**

3 A. Yes, I did review the testimony of Mr. Ruscilli and I find much of his
4 testimony inaccurate and problematic. I would like to take this
5 opportunity to rebut the testimony of Mr. Ruscilli.

6
7 **Q. In his direct testimony, Mr. Ruscilli makes the claim that it will be too**
8 **expensive for BellSouth to make changes to its systems in order for**
9 **BellSouth to provide its Fast Access Internet service over UNE-P**
10 **lines. Should the TRA consider this argument?**

11 A. No. There are two reasons why the TRA should ignore Mr. Ruscilli's
12 argument that it would be too expensive. In CCC's arbitration with
13 BellSouth in Tennessee BellSouth admitted in discovery that it was for
14 some time provisioning ADSL over UNE-P lines. BellSouth claims that
15 this was a mistake and later corrected this mistake. Related to this, I want
16 to point out one specific comment made by W. Keith Milner, a witness for
17 BellSouth, in his direct testimony in CCC's arbitration:

18 If BellSouth were required to provide its ADSL
19 solution to Competitive Local Exchange Carriers
20 ("CLECs") end users, which are without BellSouth
21 telephone numbers, the provisioning systems (and
22 also the ordering, billing, repair, and maintenance,
23 etc. systems) would have to be revamped. The
24 CLEC would now become the voice provider, and
25 accordingly there no longer is a working BellSouth
26 telephone number, but rather, a CLEC telephone

1 number that is not recognized by BellSouth's ADSL
2 loop qualification systems.¹ (emphasis added)

3 The last part of that statement is just maddening – let me explain me why.
4 BellSouth's Loop Qualification System (LQS) recognized CLEC UNE-P
5 provisioned lines until November, 2001. I have included as exhibit PLH-
6 R1 a copy of an email exchange between Hank Chow of BellSouth's
7 Wholesale Group and Kiki Deboe, Cinergy's provisioning manager. In
8 this email Mr. Chow explains that UNE-P lines no longer show up in
9 LQS, that UNE-P lines were qualifying in error in the past and that this
10 mistake has been corrected. Keep in mind that BellSouth started rolling
11 out ADSL in September of 1998! So from September 1998 to November
12 2001, more than 3 years, UNE-P lines appeared in the LQS! So
13 BellSouth's claims are extremely hard to believe. BellSouth admits that
14 they have provisioned ADSL on UNE-P lines in the past and BellSouth
15 recognized UNE-P phone number in LQS for more than three years. So
16 not only is this argument completely without legal merit, it appears that
17 there is plenty of evidence to suggest it is categorically wrong.

18
19 Second, if there are expenses to bear in order for BellSouth to provision
20 ADSL over UNE-P, they are already bearing them. In CCC's arbitration
21 case with BellSouth in the state of Kentucky, the Kentucky Public Service
22 Commission ordered:

¹ BellSouth Telecommunications, Inc., Direct Tesimony of W. Keith Milner before the Tennessee Regulatory Authority, Docket No. 01-00987, June 10, 2002, p. 6.

1 BellSouth shall not refuse to provide its DSL service
2 to a customer on the basis that the customer
3 receives voice service from a CLEC that provides
4 service by means of UNE-P.² (emphasis added)

5 CCC is already able to take advantage of this order in the state of
6 Kentucky and BellSouth is already bearing the cost that they claim they
7 should not be required to make because it is too expensive. Prior to this
8 ruling, CCC found itself in a position of losing customers back to
9 BellSouth when they wanted ADSL service. BellSouth was effectively
10 using ADSL service to remonopolize the voice market and the Kentucky
11 Public Service Commission stopped this practice.

12
13 **Q. In his testimony, Mr. Ruscilli claims that DeltaCom has other options**
14 **besides the BellSouth ADSL service over UNE-P. One of the options**
15 **listed by Mr. Ruscilli is line splitting, that is, DeltaCom could partner**
16 **with another carrier who could provide ADSL service to DeltaCom's**
17 **UNE-P customers. Is this option viable?**

18 **A.** No. This is not an option! I am not aware of a single carrier offering DSL
19 in the BellSouth footprint who would be willing to partner with DeltaCom
20 or any other service provider. To my knowledge the only other carrier
21 offering any sort of DSL service in Tennessee is Covad and their footprint
22 is limited to the business districts of Nashville and Memphis. Covad

² Commonwealth of Kentucky Before the Public Service Commission in the Matter of Petition of Cinergy Communications Company for Arbitrations of an Interconnection Agreement with BellSouth Telecommunications, Inc, Pursuant to U.S.C. Section 252, Case No. 2001-00432, p. 8.

1 originally attempted a wide deployment of ADSL and other DSL services
2 and it led to bankruptcy. They now limit their services to only the largest
3 MSAs.

4
5 **Q. Another option listed by Mr. Ruscilli is Resale. If DeltaCom**
6 **provisions a customer under resale instead of UNE-P, BellSouth will**
7 **continue to provide ADSL service. Is this option viable?**

8 Mr. Ruscilli does correctly claim that DeltaCom's customers can continue
9 receiving ADSL service from BellSouth if the lines are provisioned under
10 resale. Lines provisioned under resale receive a 16% discount off of the
11 BellSouth retail price. If DeltaCom sells this service at a 5% discount,
12 DeltaCom's gross profit margin is a paltry 4% once you take into account
13 other BellSouth charges to DeltaCom (ODUF records would be one
14 example). Most CLECs have general overhead expenses of somewhere
15 between 35% and 50%. CCC's general overhead expenses are around 30%
16 -- certainly one of the lowest in the country. Suggesting that DeltaCom
17 sell a service with just a 4% gross profit margin is just plain silly.

18
19 **Q. Does this conclude your testimony?**

20 **A. Yes.**

EXHIBIT PLH-R1

Exhibit PLH-R1

From: Henry.Chow@bridge.bellsouth.com
Sent: Monday, January 14, 2002 11:37 AM
To: kdeboe@cinergycom.com
Cc: bye@cinergycom.com; Eric.Fogle@bridge.bellsouth.com;
heck@cinergycom.com; hughes@cinergycom.com; Malcom.Kemp@BellSouth.com;
mer@cinergycom.net; rachel@cinergycom.com;
Edd.Wadley2@bridge.bellsouth.com
Subject: RE: Cinergy ADSL problems

Kiki,

1. Fastaccess.com uses the same Loop qualification database that Cynergy has access to using LQS. UNE-Ps would not qualify using either tool. As Pat and I had discussed before, UNE-Ps were qualifying in error in the past and that has been corrected.

2. The telephone number 270-781-7010 qualifies in LQS and reflects that it is not a UNE-P in my assignments database. You should be able to submit an order against it as long as the CSR has been posted. If it still does not work, let me know. Thanks! -Hank

>Hank,

>

>I have a couple of more issues that I need your assistance with.

>

>1. We were previously able to qualify lines on UNEP for DSL through the LQS and through fastaccess.com. However, as of Monday, we can no longer qualify UNEP lines through the systems you provide.

>2. I have a customer requesting aDSL service. I placed the order to switch the line (2707817010) from UNEP to Resale, since Bell has yet to allow aDSL on UNEP. I tried to place the order yesterday even though the line was on resale but the CSR had not updated. I got a response "2707817010 Not Qualified". I assumed the problem was due to the CSR. So, the CSR updated today on resale. However, when I tried to place the order, once again I got a response "2707817010 Not Qualified". This line did previous qualify through LQS and fastaccess.com. Also, it appears on the list you sent Pat Heck as a qualified line.

>

>Please advise ASAP.

>

>Thanks,

>Kiki DeBoe